

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

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|--|---|---------------------------|
| TERRENCE M. GORE, |) | |
| Petitioner, |) | |
| vs. |) | No. 3:15-CV-0272-K |
| |) | |
| TENE CALLAHAN, |) | |
| Judge, 302nd Judicial District Court, |) | |
| Respondent. |) | |

ORDER

Petitioner Terrence M. Gore has filed additional objections to the magistrate judge's recommendation that his motion for leave to proceed in forma pauperis on appeal should be denied. (doc. 38.) The magistrate judge had noted that Petitioner then had \$7,000 in a checking or savings account. The total applicable appellate filing fees are \$505. Petitioner has provided as an exhibit a document showing that, while his in-forma-pauperis motion was pending on August 24, 2015, he paid \$5,000.00 to an attorney to enter an agreement for legal services. (doc. 38-2, at 1.) If Petitioner had \$5,000.00 available to enter an attorney fee agreement, he certainly had \$505.00 to pay the appellate fees. Petitioner's objections to the recommendation regarding pauper status will be denied/overruled. Further, Petitioner's additional objections to the recommendation that any appeal be certified as not taken in good faith are denied/overruled for the reasons stated in the findings, conclusions and recommendation of the United States Magistrate Judge filed on July 7, 2015, as adopted by this Court on July 9, 2015.

Petitioner has also filed written objections to the magistrate judge's findings, conclusions and recommendation that his motions to extend time to file a notice of appeal should be denied. (Doc. 37.) As noted by the magistrate judge, the notice of appeal was due to be filed by August 10, 2015, but the notice of appeal was not filed until August 13, 2015. Attached to these written objections, Petitioner has now provided an exhibit showing that he created a notice of appeal on August 10, 2015 (Exhibit 1); an exhibit showing that he was electronically interacting with the Court's web site on August 10, 2015 (Exhibit 2); and exhibits showing that he attempted to submit a document to the criminal filing section of the Court's Electronic Case Filing (ECF) system (doc. 37-2, pages 1-2.) From a review of these exhibits, it appears that Petitioner improperly attempted to submit a document to the "Appeal Documents" section of the Court's criminal ECF system. As he is a pro se party to a civil case, the ECF system does not allow him to file documents in a criminal case. Although the Court's ECF Administrative Procedures instruct a party who has a problem electronically filing a document to e-mail that document to the Court, there is no record of Petitioner having followed this procedure on August 10. Because Petitioner has now provided with his objections documentation showing that he did attempt to electronically file a notice of appeal on the last date for filing such a document (August 10, 2015), however, the Court will sustain the objections and find that Petitioner has shown good cause to extend the time to file notice of appeal such that Petitioner's motions to extend time to

file a notice of appeal will be granted.

Therefore, it is **ORDERED** that Petitioner's objections to the recommendation that his in-forma-pauperis motion on appeal be denied and certified as not taken in good faith (doc. 38), are **DENIED/OVERRULED**.

Furthermore, it is **ORDERED** that Petitioner's objections to the August 27, 2015 findings, conclusions, and recommendation of the magistrate judge (doc. 37) are **SUSTAINED**, such that Petitioner's motions to extend time to file a notice of appeal under Federal Rule of Appellate Procedure 4(a)(5) (docs 28 and 29) are **GRANTED**, and the notice of appeal filed on August 13, 2015 is deemed timely filed within the extended time allowed under Federal Rule of Appellate Procedure Rule 4(a)(5).

SO ORDERED.

SIGNED September 10th, 2015.



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UNITED STATES DISTRICT JUDGE